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In re Application of	:	DECISION
KAMLEITER et al.	:	
Application No.: 10/582,349	:	
PCT No.: PCT/EP2004/010434	:	
Int. Filing Date: 17 September 2004	:	
Priority Date: 11 December 2003	:	
Attorney Docket No.: 51648	:	
For: METHOD FOR THE PRODUCTION OF	:	
TUBULAR MEMBRANES	:	

This decision is in response to applicants' "RENEWED PETITION OF APPLICATION UNDER 37 CFR 1.47(A) AND/OR 1.43" filed 16 October 2007.

#### **BACKGROUND**

On 17 September 2004, applicants filed international application PCT/EP2004/010434, which designated the United States and claimed a priority date of 11 December 2003. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 07 July 2005. The thirty-month period for paying the basic national fee in the United States expired at midnight on 12 June 2006 (June 2006 being a Sunday).

On 09 June 2006, applicants filed a transmittal letter for entry in to the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 21 February 2007, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) and the surcharge under 37 CFR 1.492(h) were required.

On 30 July 2007, applicants filed a submission which was properly treated as a request for status under 37 CFR 1.43 for inventor Wilhelm-N. Gudernatsch and as a petition under 37 CFR 1.47(a) for inventor Michael Kamleiter.

On 29 August 2007, a decision was mailed refusing the request for status under 37 CFR 1.43 and dismissing without prejudice the petition under 37 CFR 1.47(a).

On 16 October 2007, applicants filed the instant "RENEWED PETITION OF APPLICATION UNDER 37 CFR 1.47(A) AND/OR 1.43" which was accompanied by, *inter alia*, a supplemental declaration of facts by Martin Bartels and a new declaration of inventors.

### DISCUSSION

#### Request Under 37 CFR 1.43

As noted in the decision mailed 29 August 2007, the indication that inventor Wilhelm-N. Gudernatsch is suffering from severe mental illness and the execution of the declaration of inventors by his legal representative, Edith Gudernatsch, on his behalf has been treated as a request for status under 37 CFR 1.43.

The declaration of inventors filed 16 October 2007 does not include the residence, mailing address and citizenship of the person(s) signing on behalf of the legally incapacitated inventor (37 CFR 1.497(b)(2)) in addition to the full name and citizenship of the legally incapacitated inventor (37 CFR 1.497(a)(3)). Also, the declaration does not indicate that Edith Gudernatsch is the legal representative for the deceased inventor. The supplemental statement of facts by Martin Bartels states that Edith Gudernatsch is the legal representative for the deceased inventor and states her residence, mailing address and citizenship. However, as noted above, the information is required to be in the declaration of inventors.

#### Petition Under 37 CFR 1.47(a)

A petition under 37 CFR 1.47(a) must be accompanied by: (1) the fee under 37 CFR 1.17(h); (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort; (3) a statement of the last known address of the missing inventor; and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

Item (1) has been satisfied.

Item (2) has not been met. MPEP § 409.03(d) states in part:

A refusal by an inventor to sign an oath or declaration when the inventor has not been presented with the application papers does not itself suggest that the inventor is refusing to join the application unless it is clear that the inventor understands exactly what he or she is being asked to sign and refuses to accept the application papers. A copy of the application papers should be sent to the last known address of the nonsigning inventor, or, if the nonsigning inventor is represented by counsel, to the address of the nonsigning inventor's attorney. . . . It is reasonable to require that the inventor be presented with the application papers before a petition under 37 CFR 1.47 is granted since such a procedure ensures that the inventor is apprised of the application to which the oath or declaration is directed. In re Gray, 115 USPQ 80 (Comm'r Pat. 1956).

Here, it is still not clear that a copy of the application papers including the specification, claims, and drawings was sent to Mr. Kamleiter (or rather to Mr. Robert Dorr who is acting as the representative of Mr. Kamleiter). The supplemental statement of facts by Martin Bartels

indicates that he sent a letter 02 November 2006 "requesting Dipl.Ing Christian Dahlberg to transmit a copy of the above-identified application and the declaration and assignment therefor to Mr. Kamleiter for him to sign and return." MPEP § 409.03(d) states in part:

Where a refusal of the inventor to sign the application papers is alleged, the circumstances of the presentation of the application papers and of the refusal must be specified in a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted.

No statement of facts by a person having firsthand knowledge of the sending of a copy of the application papers has been provided.

Item (3) has now been met.

Item (4) has not been met. As noted above, the declaration of inventors filed 16 October 2007 fails to comply with 37 CFR 1.497(a)-(b).

#### **CONCLUSION**

For the reasons set forth above, the request for status under 37 CFR 1.43 is **REFUSED**.

For the reasons set forth above, the petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration on the merits of the petition under 37 CFR 1.47(a) and/or 37 CFR 1.43 is desired, a proper reply must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a) [and/or 37 CFR 1.43, as appropriate]." No additional petition fee is required.

Failure to timely file a proper reply will result in abandonment of the application.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

/Daniel Stemmer/

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